

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

MICHAEL DEAN ALBERT,

Plaintiff,

vs.

MONTANA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

CV 21-0016-H-BMM-KLD

**ORDER ADOPTING MAGISTRATE
JUDGE’S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Michael Dean Albert (“Albert”) filed this action against the several individual defendants alleging deprivation of medical care during his incarceration. (Doc. 2). Albert moves for a settlement (Doc. 33) and to add defendants (Doc. 41). Defendants Heidi Abbott Alishia Jameson, Paul Rees, Melissa Scharf, and Connie Winner (collectively “Defendants”) moved for judgment on the pleadings (Doc. 43) and to strike Albert’s response to Defendants’ Answer (Doc. 45). Judge Kathleen DeSoto issued Findings and Recommendations on March 16, 2022. (Doc. 48). Judge DeSoto denied both of Albert’s motions and Defendants’ motion to strike. (*Id.* at 6).

Judge DeSoto recommended that the Court grant Defendants’ motion for judgment on the pleadings as to any allegations of sexual assault. (*Id.* at 6). Albert

included the allegation of sexual assault and subsequent denial of mental health care related to the assault for the first time in his Amendment. (*Id.* at 2). Albert's Complaint contained claims related to his heart and leg. (*Id.*). Judge DeSoto determined that Albert's sexual assault allegations failed to state a claim upon which relief could be granted because he failed to identify his assailant and he did not claim that any of the named defendants had any involvement with or knowledge of the assault. (*Id.* at 3). Albert filed objections to Judge DeSoto's Findings and Recommendations. (Doc. 49).

The Court reviews de novo those Findings and Recommendations to which a party timely objected. 28 U.S.C. § 636(b)(1). The Court reviews for clear error the portions of the Findings and Recommendations to which the party did not specifically object. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where a party's objections constitute perfunctory responses argued in an attempt to engage the district court in a reargument of the same arguments set forth in the original response, however, the Court will review the applicable portions of the findings and recommendations for clear error. *Rosling v. Kirkegard*, 2014 WL 693315, *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Albert objects to Judge DeSoto's proposed denial of his sexual-assault-related claims. (Doc. 49 at 1). Albert argues that his claim does not relate to his alleged sexual assault itself, but rather centers around the ensuing investigation and alleged denial of mental health services following the assault. (*Id.*). Albert argues that Defendants were "well aware" of the investigation following the assault and denied Albert counseling. (*Id.* at 2). Albert once again fails to name any of the Defendants by name, nor does he identify any facts in support of his contention. His threadbare, conclusory statements prove insufficient to state a claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice [to state a claim upon which relief may be granted]").

Albert's objections otherwise advance the same arguments that he set forth previously. The Court reviewed Judge DeSoto's Findings and Recommendations for clear error. *See Rosling*, 2014 WL 693315 at *3. The Court finds no error. Accordingly, **IT IS ORDERED** that:

1. Judge DeSoto's Findings and Recommendations (Doc. 48) are **ADOPTED IN FULL**.
2. Defendants' Motion for Judgment on the Pleadings is **GRANTED** as to any allegations of sexual assault. (Doc. 43).

3. At all times during the pendency of this matter, Albert must keep the court apprised of any changes of address. Failure to do so may result in dismissal pursuant to Fed. R. Civ. P. 41.

DATED this 28th day of March, 2022.

A handwritten signature in blue ink, reading "Brian Morris".

Brian Morris, Chief District Judge
United States District Court